

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

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| NAVY SEALS 1-26, et al. |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. 4:21-cv-01236-O |
| |) | |
| JOSEPH R. BIDEN, JR., in his official |) | |
| capacity as President of the United States, |) | |
| et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |

DEFENDANTS' UNOPPOSED MOTION FOR RECONSIDERATION

Defendants respectfully request that the Court reconsider the schedule for Defendants' opposition (if any) to Plaintiffs' motion to proceed anonymously.

BACKGROUND

1. On December 1, 2021, Plaintiffs moved for the entry of a protective order and to proceed anonymously. Pls.' Mot., ECF No. 26. Plaintiffs indicated that Defendants were opposed to the entry of a protective order. *Id.* at 7.
2. On December 2, 2021, the Court found "that expedited briefing is necessary to resolve the issue of whether a protective order is required" and ordered Defendants to file a response by December 6, 2021. Order, ECF No. 28.
3. On December 2, 2021, Defendants filed their response to the Court's Order. Defs.' Resp., ECF No. 30. In that response, Defendants "correct[ed] Plaintiffs' misrepresentation concerning the Government's position," *id.* at 1, requested the Court enter a protective order similar to an order entered in a related case, *id.* at 2–3, requested that the Court order Plaintiffs to immediately provide the names of all 35 Plaintiffs to

Defendants, *id.* at 3, and requested that the Court grant Defendants until December 16, 2021 to either oppose Plaintiffs' motion to proceed anonymously or inform the Court that it will not oppose such a motion, *id.* at 3.

4. On December 3, 2021, the Court directed Plaintiffs to provide the names of Plaintiffs to Defendants and ordered the parties to confer about a proposed protective order. Order, ECF No. 34. The Court further stated,

Defendants also seek an extension of time to December 16, 2021, to respond to Plaintiffs' Motion for Protective Order. Instead of an extension, Defendants can move to reconsider this Order if and when they determines additional relief is necessary.

Id. at 2 n.1

5. On December 3, 2021, the parties conferred and agreed upon a proposed protective order. The parties submitted the proposed protective order with a joint response to the Court's December 2, 2021 Order. Joint Resp., ECF No. 36. In that joint response, the parties "agree[d] that [the proposed protective] order resolves the need for expedited briefing on Plaintiffs' motion for protective order and propose[d] that Defendants receive the normal time under the Local Rules of this Court to file an opposition to that motion (to December 22, 2021) if they determine they have a basis for doing so. *Id.* at 1.
6. Plaintiffs provided the names of the Plaintiffs to defense counsel on December 3, 2021. Plaintiffs stated that the list names and addresses of Plaintiffs were for "attorneys' eyes only." (Defendants did not agree that there was a basis for such a limitation.)
7. On December 6, 2021, the Court entered the parties' proposed protective order. Protective Order, ECF No. 37.
8. After the Court entered the Protective Order, Plaintiffs' counsel sent the list of names and addresses of Plaintiffs to Defendants pursuant to the terms of the Protective Order.

LEGAL STANDARDS

“Interlocutory orders . . . are left within the plenary power of the court that rendered them to afford such relief from them as justice requires.” *McKay v. Novartis Pharm. Corp.*, 751 F.3d 694, 701 (5th Cir. 2014) (quoting *Zimzores v. VA*, 778 F.2d 264, 266 (5th Cir. 1985)). Such orders “may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities,” Fed. R. Civ. P. 54(b), and “for any reason [the trial court] deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law,” *Austin v. Kroger Texas, L.P.*, 864 F.3d 326, 336 (5th Cir. 2017) (quoting *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 185 (5th Cir. 1990)).

ARGUMENT

Reconsideration of the Court’s December 3, 2021 Order, ECF No. 34, is warranted. Plaintiffs claim that they must be allowed to proceed anonymously due to national security and operational security concerns. Pls.’ Mot. 3–5, ECF No. 26. Because Defendants received the names of Plaintiffs on Friday, December 3, Defendants have not yet had an opportunity to evaluate those purported concerns. Defendants need time to evaluate those concerns before Defendants can determine whether to oppose Plaintiffs’ motion to proceed anonymously. Accordingly, Defendants respectfully request that they be permitted until December 22, 2021, to either oppose Plaintiffs’ motion to proceed anonymously or inform the Court that it will not oppose such a motion. This proposed filing deadline is consistent with the default response time provided by Local Rule 7.1(e).

Defense counsel conferred with Plaintiffs' counsel, and Plaintiffs' counsel does not oppose the relief requested in this motion as long as Plaintiffs are permitted to proceed by pseudonym at the December 20, 2021 hearing on their motion for a preliminary injunction.

CONCLUSION

For the foregoing reasons, the Court should reconsider its December 3, 2021 Order and permit Defendants to file a response to Plaintiffs' motion to proceed anonymously by December 22, 2021.

Dated: December 6, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General
Civil Division

ANTHONY J. COPPOLINO
Deputy Director
Federal Programs Branch

/s/ Courtney D. Enlow
ANDREW E. CARMICHAEL
Senior Trial Counsel
COURTNEY D. ENLOW (NC Bar No. 46578)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Room 12102
Washington, D.C. 20005
Tel: (202) 616-8467
Email: courtney.d.enlow@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2021, I electronically transmitted the foregoing to the parties and the clerk of court for the United States District Court for the Northern District of Texas using the CM/ECF filing system.

/s/ Courtney D. Enlow

COURTNEY D. ENLOW

Trial Attorney

United States Department of Justice

Civil Division, Federal Programs Branch

1100 L Street, N.W.

Room 12102

Washington, D.C. 20005

Tel: (202) 616-8467

Email: courtney.d.enlow@usdoj.gov